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Rights of the Child

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION

Initial reports of States parties due in 1993

Addendum

UKRAINE

[13 October 1993]

REPORT OF UKRAINE ON MEASURES TAKEN TO ENFORCE THE RIGHTS RECOGNIZED BY THE CONVENTION ON THE RIGHTS OF THE CHILD AND PROGRESS MADE IN IMPLEMENTING THOSE RIGHTS

1. Ukraine recognizes that children are entitled to special care and support since they represent the future of the nation. Our country is convinced of the need for statutory protection of children and has therefore adhered to the Convention on the Rights of the Child.

2. In general all the basic rights of the child recognized in the Convention are guaranteed by the Constitution and by the relevant legislative acts of Ukraine and are actively applied. The enforcement and implementation of each of those basic rights is considered in greater detail below.

3. Under Ukrainian legislation, a child is defined as a person below the age of 18, that is, the age of majority. Specific enactments contain a variety of provisions regulating the statutory relations between two parties one of whom is a child.

4. In general (in civil law) a child has legal capacity but is not subject to civil responsibility. However, this needs to be qualified: in civil law, a child is subject to limited civil responsibility between the ages of 15 and 17, from the age of 16 years a child may be prosecuted in the normal way (14 years if the crime is a serious one), and at the age of 16 a minor may be employed (15 years in exceptional cases).

5. Children are protected by the State from all forms of discrimination and violence under the normal provisions.

6. Any violation of the equality of citizens on grounds of race, nationality or religion is a criminal offence (art. 66 of the Criminal Code of Ukraine).

7. According to article 5 of the Convention, "States Parties shall respect the responsibilities, rights and duties of parents ... or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.". Ukraine adheres to this principle and attaches great importance to the rights of parents.

8. Parental rights may be defined in essence as the right to bring up a child oneself. Inasmuch as parental rights are centred on the right to bring up a child, they are enjoyed by parents until the child comes of age, whereupon they cease to exist.

9. Legislation in Ukraine has established the principle of full equality of both parents in the matter of bringing up children and neither enjoys any primacy. As a rule, where parents live together, all issues relating to the upbringing of the children are decided jointly, but statutory procedures exist for settling any disputes which may arise. Thus, article 65 of the Code on Marriage and the Family of Ukraine provides that a parent who does not live under the same roof as the child shall have the right of access to the child and to participate in the child's upbringing. The parent who lives under the same roof as the child is not entitled to impede the other parent's access to the child or participation in the child's upbringing, provided that such access does not hinder the normal upbringing of the child. In the event that the parent with whom the child lives does not consent to the other parent's seeing the child, the dispute is settled by the wardship and guardianship authorities in consultation with the parents.

10. If one of the parents fails to comply with the instructions of the wardship and guardianship authorities, the other parent is entitled to seek a court ruling on the dispute. When examining disputes on the place of residence of children who have reached the age of 10, the court must ascertain with which parent the child wishes to live. The child's wish is not binding on the court if it determines that it is not in the child's interest to remain with the parent of his or her choice.

11. Legislation guarantees the right of parents to seek the return of children from any individual detaining them without legal justification or a court ruling.

12. Deprivation of parental rights is the ultimate sanction under family law and may be applied to parents who fail to provide due care for their children. Such measure may be taken only by court ruling. The law recognizes a number of grounds for deprivation of parental rights Foremost among these is failure of the parents to fulfil their responsibilities for the upbringing of their children. Such failure must be intentional. Another ground for deprivation of parental rights is abuse of those rights, i.e. deliberate use of them to harm children. Individuals may also be deprived of their parental rights for cruelty to their children, for inflicting corporal punishment on them or humiliating them, or for deliberately exposing them to conditions likely to impair their health. Most commonly courts suspend parental rights in cases where the parents are chronic alcoholics or drug abusers and, through their reprehensible behaviour, exert a bad influence on their children. A court ruling on deprivation of parental rights means that the child may not be left in the care of the father or the mother, or of either.

13. If the child has been living with both parents and one of them is deprived of parental rights, the child is left in the care of the other. If, however, both parents are deprived of parental rights the child is made a ward of the wardship and guardianship authorities. The latter then decides which individuals or institutions should be entrusted with the child's upbringing and will appoint a guardian or, depending on the age and health of the child, place him or her in a children's home, foster home or boarding school.

14. Although deprivation of parental rights is of indefinite duration, the court may restore them at the request of parents who change their way of life.

15. As indicated above, family relations are governed by the Code on Marriage and the Family of Ukraine. That Code sets out the fundamental rights of the child, which are based on the assumption that the child should be brought up in a family. The Code includes clauses reflecting the tenor of articles 3, 5, 7, 8, 9, 18, 19, 20 and 21 of the Convention on the Rights of the Child.

16. Article 26 of the Convention states that "States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law." Ukraine has guaranteed that right through its national legislation. On 1 January 1992 the Pensions Act came into force. This guarantees the right of all Ukrainian citizens who are unable to work, including children, to financial assistance from public funds in the form of occupational and social pensions.

17. Under the Act, children who lose a breadwinner (one parent) are accorded benefits amounting to 30 per cent of the deceased parent's earnings for each child. Children who lose both parents receive twice the minimum pension according to age.

18. Families with children suffering from mental or physical disabilities may find themselves in financial difficulties. Mothers are often obliged to stop working in order to care for a child. Parents who do not wish to place the child in full State care at a specialized institution receive a welfare benefit from the State.

19. Enacted for the further strengthening of State assistance to families with children and to improve the care given to the rising generation, the Act on State Allowances to Families with Children establishes a State-guaranteed level of support for families with children by providing allowances based on the make-up of the family concerned, its income, and the age and health status of the children. Under existing legislation, individuals disabled from childhood in the first and second categories, as well as disabled children under the age of 16 years, pay reduced charges for medicines and for travel by rail, water and air and on municipal public transport.

20. A total of 699 boarding institutions of 26 types exist to cater to the needs of the 1.47 million children requiring social protection and State assistance. The Republic has five training institutions at which disabled juveniles can learn nine trades. Graduates of the technical secondary schools are placed in industrial enterprises, State institutions and in the agricultural sector.

21. Various charitable public and commercial organizations assist children's homes by providing funds and equipment. However, in spite of the State's endeavours to realize children's right to social security there are many difficulties in providing coverage, the main one being the lack of resources owing to the critical state of the national economy. The legislation of the Ukraine thus complies with the provisions of articles 23 and 26 of the Convention.

22. Article 24 of the Convention stipulates that "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. "Ukraine has built up a coordinated system of medical care for children. Access to medical care has been guaranteed through improvements in primary health care, the introduction of new methods of diagnosis and treatment in provincial and municipal paediatric treatment and prevention centres, and the establishment of a national network of specialized medical centres (in areas such as microsurgery, maxillo-facial surgery, speech and hearing disabilities, etc.). Medical treatment for children is free.

23. Issues connected with the right of children to health care are addressed in the national long-term programme for improving the condition of women and families and for protecting mothers and children. The fundamental aim of this programme is to safeguard the health of children. Although there have been successes in providing skilled, specialized care for sick children, the paediatric service in Ukraine is facing difficulties in organizing certain types of treatment, more particularly kidney transplants, bone marrow transplants, cardiac surgery for newborn babies, haematology and oncology. The situation is exacerbated by the lack of vital drugs and equipment for treatment and diagnosis. In an attempt to solve these problems the Ukrainian Ministry of Health has concluded agreements with the Ministry of Health and Social Security of the Republic of Poland and with the Moscow municipal authorities, and there are plans to enter into agreements with other States. New home-produced drugs and equipment are coming on to the market and research is under way in key areas of medicine.

24. According to article 28 of the Convention, "States Parties recognize the right of the child to education". In Ukraine, this right is guaranteed by the State. Primary and secondary education is free and available to all children. The Ukrainian Education Act contains specific provisions governing children's right to education, which is guaranteed through an extensive network of teaching institutions. Various types of education are available and the kind of training can be chosen to match the interests, aptitudes and abilities of the child.

25. Under the terms of the Act, pre-school education takes place in the family and in pre-school institutions. Children may attend nursery institutions between the ages of two months and seven years if their parents or guardians wish. In Ukraine today there are 23,800 pre-school institutions providing education for 2.2 million children. That figure includes 1,080 institutions which provide care for 42,806 children with physical or psychological disabilities.

26. There are 21,033 general schools providing education for 6,835,000 students. There are also 470 evening and correspondence schools providing courses for 1.69 million young employed people.

27. Higher education in Ukraine is open to all. Any child may go on to higher education after passing the entrance examinations, and discrimination against him or her on grounds of sex, race, nationality or religion is prohibited.

28. The education of children in Ukraine aims at the all-round development of personality, talents, and intellectual and physical aptitudes. Ukraine is a young nation-State, so great attention is currently paid to instilling in the young a respect for our national values. At the same time, children are educated in a spirit of friendship between all peoples and between ethnic, national and religious groups.

29. Ukraine also applies the provisions of article 30 of the Convention. Children belonging to national minorities are, under the terms of the Act concerning national minorities in Ukraine, guaranteed by the State the right to enjoy, in community with other members of their group, their own culture, to profess and practise their own religion, and to use their native language.

30. The State publishing programme for minority languages provides for the publication of children's literature, primers, school textbooks and stories. For example, in the academic year 1992/93 the "Osvita" publishing house published a total of 157,000 copies of 35 textbooks for schools in Ukraine providing tuition in Hungarian, Romanian and Polish.

31. About 14,000 students are taught in Moldavian, 19,000 in Romanian, 18,000 in Hungarian, 547 in Polish and 142 in Crimean Tartar. There are also schools on Sunday where children may learn their native language and culture. There is a multitude of children's groups, national creative workshops and drama schools. The State encourages participation by all children, irrespective of their nationality, in cultural and artistic life.

32. Throughout Ukraine, there are recreational institutions for children and young people with a multitude of different clubs and workshops, where children may find pastimes to suit their interests. Such recreational clubs are also organized by schools. A large number of children's theatres have been established where the rudiments of dramatic art are taught. Specialized sports schools, boarding schools and sports societies provide coaching for budding sportsmen and sportswomen.

33. The right of children to rest and recreation is also guaranteed through a network of children's health camps, sanatoria and holiday homes.

34. The Ukrainian Federation of Trade Unions plays an active part in the organization of recreational activities for children. In 1993 the member unions of the Federation, together with various businesses and local authorities, opened 2,500 children's health camps of various types, which catered for 900,000 school-age children, including over 150,000 from areas affected by radioactive contamination. About 40,000 orphans and other children deprived of parental care went to health camps at State expense. Over 60 per cent of the cost of each child's stay in the camp was covered by the trade union and social insurance budgets, while about 10 per cent of the total cost was paid by the parents.

35. On the other hand, the economic crisis, the reduction in spending on social needs, and the sharp rise in the cost of energy, food, and public services has resulted in an increase in the cost of stays at health and recreational institutions, thus forcing collectives and trade unions to cut back considerably on their facilities. Owing to lack of means, high taxes and industrial disruption, Ukraine has over the past three years closed or converted to other uses over 300 permanent country health camps for children, over 6,000 work and recreation camps for juveniles, and over 3,500 day camps set up by schools and by cultural, sports and non-scholastic institutions. The result has been a more than threefold reduction in the number of children who have access to organized annual holidays. There has also been a serious deterioration in the material and technical facilities available to children's health resorts, especially in terms of technical equipment, supplies, food and medicines.

36. The grave problems which we face in organizing recreation and health promotion for children can be solved only through an integrated approach. There is now a need for a long-term government programme targeted to improving the health of children and young people in Ukraine. The issue is currently under discussion in the Cabinet.

37. Ukrainian legislation complies with article 32 of the Convention on the Rights of the Child. Ukraine recognizes the right of the child to protection from economic exploitation and from performing any work involving health hazards. Article 188 of the Labour Code of Ukraine states that:

> "The hiring of persons younger than 16 years of age shall not be permitted.
>
> "In exceptional cases, by agreement with the factory, plant, or local committee of the trade union, persons aged 15 years can be hired."

38. To prepare them for productive work young people aged 14 or over at secondary schools, technical and vocational schools and other specialized secondary schools may, with the consent of one of their parents or a guardian, be employed during their study-free time for light duties which do not interfere with their education or pose a threat to their health.

39. Article 190 of the same Code states that:

> "It is unlawful to employ persons younger than 18 years old in arduous work and in work performed under harmful or dangerous working conditions, as also in underground work.
>
> "It is also unlawful to employ persons under 18 years of age in carrying or moving weights exceeding the maximum norms established for them."

40. According to article 192, it is unlawful to employ persons below the age of 18 for work at night, for overtime and for work on days off.

41. The provisions of article 33 of the Convention are applied. Efforts are now being made in Ukraine to protect children from the illicit use of narcotic drugs and psychotropic substances. Efforts are also being made to ensure that children have positive activities to occupy them, thus reducing the temptation to try drugs. Influencing minors to use narcotics is a criminal offence under Ukrainian law (art. 229-5 of the Criminal Code of Ukraine) and is punishable by up to 10 years' imprisonment.

42. Involving minors in a criminal activity is a criminal offence under Article 208 of the Criminal Code of Ukraine.

43. Steps are also being taken to implement article 34 of the Convention. Children are protected by the State from sexual exploitation and abuse. The rape of a minor is punishable under article 117, section 3, by between 5 and 15 years' imprisonment, and rape of a child carries a penalty of between 8 and 15 years under section 4 of the same article. Indecent assault on minors, that is, perpetration of indecent acts with individuals below the age of 16, is punishable by up to three years' imprisonment.

44. There are at present no provisions in the Criminal Code covering the offences described in the Convention as "the exploitative use of children in prostitution or other unlawful sexual practices" or "the exploitative use of children in pornographic performances and materials". However, there are plans to raise the question of appropriate amendments to the Criminal Code in the Supreme Soviet.

45. Ukrainian legislation complies with article 37 of the Convention, and also with the minimum standards established under the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. ("The Beijing Rules"). Under article 24 of the Criminal Code of Ukraine persons who were below 18 years of age at the time of committing an offence may not be sentenced to the death penalty. A person who at the time of committing a crime was below 18 years of age may not be sentenced to more than 10 years' imprisonment. In general, only persons who are 16 years of age or more at the

time of committing an offence may be held criminally liable and, where the accused is 14 or above, only for some of the most serious offences namely homicide, deliberate assault resulting in an impairment to health, theft, robbery, looting, hooliganism or aggravated hooliganism, deliberate destruction of or damage to property with serious consequences, and deliberate acts likely to cause a train crash (art. 10, sections 1 and 2 of the Criminal Code).

46. In view of the physical and social immaturity of such individuals, and their limited legal and civil responsibility, the legislature has established rules of procedure which accord them fuller guarantees of their right to protection than are enjoyed by adults, and allow judicial bodies to relieve them of criminal responsibility and waive sentences.

47. In all cases of juvenile crime a preliminary investigation is obligatory. This is conducted by specialist investigators.

48. In juvenile crime cases a defence counsel must be brought in as soon as the individual is charged, and, in cases where a minor is detained as a suspect or taken into preventive custody before being charged, as soon as the detention or preventive custody order is read out to him or her and in any event no later than 24 hours after the minor is detained (art. 44, sect. 2 and art. 45, sect. 2, of the Code of Criminal Procedure of Ukraine). This rule applies to all persons under 18 years of age suspected or accused of committing indictable offences. The parents or guardians of any minor detained or taken into custody must be informed of the fact as must the individual's employer or school. An appeal against detention or custody can be made through the courts in accordance with established legal procedure.

49. The Criminal Code of Ukraine guarantees minors the right to an open and fair trial as required under article 40 of the Convention.

50. Although considerable progress has been made in this regard there remain some legislative problems connected with the legal implementation of the rights of the child. For example, there are no real guarantees under existing legislation of the right of the child to express an opinion freely, the right to freedom of thought and of conscience, the right to freedom of association and peaceful assembly, the right to a private life, a family life, the inviolability of the home, or confidentiality of correspondence, nor is there any guarantee of the principle that the child may not be subjected to unlawful attacks on his or her honour and reputation.

51. A draft act on the rights of the child, guaranteeing all the above-mentioned rights, has been prepared and will shortly be discussed by the Supreme Soviet of Ukraine.